

GHANA / JUDGMENT

Dzivenu And Another Vrs Korku And 4 Others (E12//01/2023) [2024] GHAHC 249 (9 July 2024)

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IN THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON TUESDAY, THE
9TH DAY OF JULY, 2024 BEFORE HIS LORDSHIP JUSTICE DANIEL MENSAH,
ESQ., JUSTICE OF THE HIGH COURT.

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SUIT NO: E12//01/2023

1. NANI AGBOGLI DZIVENU

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PLAINTIFFS/APPELLANTS

2. JOHNSON DOGBEY MORDEDZI

VS

1. FAMOUS KORKU

RESPONDENTS

2. AMEGA ANDREWS ATSU KORKOR

3. AMEGA ALBERT KWAWUKUMEY

4. WISDOM ATSIASA KUKUBOR

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PARTIES:

1ST APPELLANT PRESENT.

1ST AND 4TH RESPONDENTS PRESENT.

2ND RESPONDENT REPRESENTED BY ALI KUKUBOR.

3RD RESPONDENT REPRESENTED BY THOMPSON SEMENA.

COUNSELS:

MR. BERNARD DZINYELA, ESQ., HOLDING BRIEF FOR MR. B.T.
ADAKANLA, ESQ., COUNSEL FOR APPELLANTS

-

PRESENT.

JUDGMENT

The Plaintiffs/Appellants have filed the present appeal against the judgment at the District Magistrate delivered on the 22/02/2022 in the District Court, Anloga. ~ 1 ~ To help understand the basis of this appeal, the background leading to the appeal ought to be stated. On the 09/12/2020, the Plaintiffs/Appellants caused a writ to be issued against the defendant (now 1st defendant/respondent in this appeal) for: -

- a) Declaration of title and rightful ownership to all that, piece or parcel of land (building plot) situate lying and being at Kpordui and bounded as follows: On the East by the property of the Plaintiffs. On the West by the property of the Plaintiffs. On the South by the property of Plaintiffs, and On the North by the property of the Plaintiffs
- b) An Order for perpetual injunction to be decreed, restraining the Defendants by himself, his assigns, privies, workmen and or labourers and any other person or persons whatsoever connected to the Defendants from any further act or acts of trespass unto the land, subject matter of dispute. C) General damages for trespass and wrongful encroachment.
- d) Recovery of possession.
- e) Cost. The Plaintiffs/Appellants pursuance to an Order of the Court filed their Statement of Claim on the 06/01/2021 two (2) days after the said Statement of Claim, three (3) persons filed an application to join the suit as Co-defendants. Notwithstanding an Affidavit in Opposition filed by the Plaintiffs/Appellants to the said application, the learned District Magistrate granted the application joining the three (3) persons as Co-defendants in the matter. ~ 2 ~ Both parties gave evidence in the matter and called witnesses to buttress their varied positions as to how they had come to own the land in dispute. Subsequently, the trial court embarked on a Locus and thereafter continued the final hearing of the matter. The learned District Magistrate after the hearing delivered judgment in the matter on the 22/02/2022 dismissing the Plaintiffs/Appellants action and entering judgment in favour of the defendants and Co-defendants. The Plaintiffs/Appellants being dissatisfied with the said judgment has filed the present appeal on grounds stated therein. The Plaintiffs/Appellants grounds of appeal can be found at page 214 of the record of Appeal. Grounds of Appeal
 - a) That the judgment is against the weight of evidence.
 - b) That the Plaintiffs did not suited the Kpordui land rather Mordedzi Family land.
 - c) Locus Report on 20/09/2021.
 - d) Judgment sent to me on the 24/02/2022 was not my suit No. A1/09/2021 while my suit No. A1/07/2021.
 - e) That the cost awarded against the Plaintiffs is unacceptable in law.

- f) Further grounds of Appeal would be filed upon receipt of the records of proceedings. ~ 3 ~ Subsequently, the Plaintiffs/Appellants obtained leave to argue additional grounds of appeal. The said additional grounds of appeal is stated as follows: -
- g) The court below erred when it determined that the Defendants/Respondents have capacity to join and defend the matter in respect of the land subject matter of the suit. Particulars of error.
- a) The court below failed to avert its mind to the fact that Defendants did not present any evidence to support their capacity when the same was put in issue by Plaintiffs/Appellants.
- b) The trial Magistrate failed to consider the fact that some of the Defendants are not indigenes of Kpordui for which reason they lack the capacity to defend the matter.
- (h) The Court below erred in law when it acted ultra vires of its jurisdiction and expanded the same and dimension of the land in respect of which the action commenced and expanded the scope to the entire Kpordui land in excess of its jurisdiction. Particulars of Error.
- a) The court below failed to restrict itself to the parcel of land in dispute and expanded the scope beyond its jurisdiction per the Law. (i) The Court below committed an error of law when it allowed and considered the petition filed by people who are not parties to the suit in its decision which process was never served on the plaintiffs. Particulars of Error. ~ 4 ~
- (a) The court below did not order the exclusion of a petition placed on its docket without notice to the plaintiffs.
- (b) The trial Magistrate relied on the content of the impugned petition to give judgment against the plaintiffs.
- (j) The Locus Report of 20/09/2021 is tainted by Defendants dishonesty in presenting Mr. John Agbenyeke as a neutral person when in fact he has an interest in the matter, for which reason the learned magistrate's reliance on the said testimony as being credible has occasioned in justice to the Plaintiffs.
- (k) The Court below erred when it failed to consider the Watchdog Committee Report which states that the land subject matter of the suit would not be alienated to private individuals. Particulars of Error The Court did not avert itself to the fact that some of the Defendants are non- indigenes of Kpordui and hence could not have validly obtained any interest in the land the subject matter of the instant suit. The judgment decreed by the learned District Magistrate over which the Plaintiffs/Appellants have appealed to this court can be found in pages 181-210 of the Record of Appeal. The first ground of appeal filed by the Plaintiffs/Appellants is that the Judgment of the Court is against the weight of evidence. It is now settled law, backed by a host of cases that where an appellant complains that a judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on the record which, if applied could have changed the decision in his favour, or that there are certain pieces of evidence that has been wrongly applied against him. The onus is on such

an appellant to clearly and ~ 5 ~ properly demonstrate to the appellate court the lapses in the judgment being appealed against. See case of Djin v. Musah Baako (2007-2008) SCGLR 686. It is again trite law that an appeal is by way of rehearing See Tuakwa V. Bosom (2001-2002) SCGLR 61. In such a case, it is incumbent on the appellate court, in a civil case, to analyse the entire record of appeal taken into account the entire testimonies and all documentary evidence adduced at the trial before arriving at its decision. That is to satisfy the court that, on the preponderance of the probability, its conclusion is reasonably or amply supported by the evidence. Per the judgment of the court at pages 207-208, the court expressed itself as follows. "Plaintiffs do not even know the boundaries of the land they came to court to claim and should not expect magic from the court. Plaintiffs have also not proved that Togbe Torsu Akporsoe founded the Kpordui land The Co-defendants adduced sufficient evidence to proof their acts of ownership and control over Kpordui lands". At this stage, it may be useful to refer to the case of Gregory v. Tandoh & ano. (2010) SCGLR 971@975 to indicate the circumstances under which an appellate Court like this court may depart from findings of fact by a trial court. These were stated in the case supra as follows: -

- (1) Where from the entire record of appeal the findings of fact by the trial court were clearly not supported by the evidence on record.
- (2) Where the findings of fact by the trial court could be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record. ~ 6 ~
- (3) Where the findings of fact are consistently inconsistent with important documentary evidence on record.
- (4) Where the trial court wrongly applied a principle of law. The 1st Plaintiff/Appellant who described himself as the current head of the Mordedzi Family of Kpordui gave evidence at the trial court. He told the court the land in dispute forms part of a larger land belonging to the Mordedzi family at Kpordui. According to him the said land had been founded by their ancestor Torsu Akporsoe who subsequently gifted the land to their family. He gave the boundaries of the land in dispute which according to him is surrounded by the Adzovia Clan land (the land of the Co-defendants) On the claim by the 1st Plaintiff/Appellant that the land in dispute which forms part of the land to the Mordedzi Family the following cross examination of the 1st Plaintiff/Appellant took place on the 20/04/2021. Q: You are saying or claiming that Torgbi Torsu Akporsoe founded the Kpordui lands. A: Yes. Q: Where is Togbi Torsu Akporsoe from? A: Dzita. Q: Which clan does he belong to? A: Tovia Clan. From the above cross examination, the 1st Plaintiff/Appellant stated that ~ 7 ~ the land granted to their family was given to them by Torgbe Torsu who is from Tovia Clan. The land in question is at Kpordui. The 1st Plaintiff/Appellants admitted that his ancestor Mordedzi who was gifted the land in dispute was from Dzovia Clan whilst he (1st Plaintiff/Appellant) was from Tovia Clan, the same clan as Togbi Torsu Akporsoe. The 1st Plaintiff/Appellant went on to tell the court that the Mordedzi was Torsu's sister's son At page 82 of the record of appeal the following record appear on the place the land in dispute lies. Q: Is it not within Kpordui land? A: I have

said Togbi Torsu Akporsoe founded the Kpordui land. The evidence given by the 1st Plaintiff/Appellant in totality is that the land gifted to the Mordedzi Family was lying and situate in Kpordui township and that the said land had been founded by his ancestor Togbi Akporsoe about Four Hundred (400) years ago. The Defendants/Respondents clearly dispute this claim by the Plaintiffs/Appellants. PW 1 Agbotadua Ahevi also gave evidence to support this claim by the 1st ~ 8 ~ Plaintiff/Appellant. 2nd defendant/ respondent gave evidence in this court and stated that Togbe Torsu Akporsoe land is nowhere near Kpordui and that the Mordedzi are settlers on the Kpordui land. 2nd defendant/respondent maintained the land in dispute forms part of the Kpordui land which shares boundary with Tovia land. I have had the pains to peruse the entire record of appeal and have not been left in any doubt that the land in dispute is lying and situate within Kpordui township. The said land together with its creeks at Kpordui has since the 1920s been adjudged as the land of the Adzovia clan from which the Co-defendants come from. On the other hand, the claim by the Plaintiffs/Appellants that the land in dispute belongs to Togbe Torsu Akporsoe who gifted same to Mordedzi is not supported by the evidence on record. If that claim by the Plaintiffs/Appellants were to be true, Exhibit "C" on the record of appeal by the Supreme Court could not have been decreed as stated by Prempeh J sitting in Ghana TransVolta Judicial Division at Ho on Friday 29/06/1962. Furthermore, it is an undisputed fact in this appeal that land holding in the Volta region is held by clans and in this case the land in dispute which forms part of the Kpordui lands cannot be vested on any other clan apart from Adzovia. ~ 9 ~ To that extent the appeal filed by the Plaintiffs/Appellants that the judgment of the court is against the weight of evidence cannot be true. In his written submissions to this court, Counsel for the Plaintiffs/Appellants opined at page 19 of the said submission, as follows "Nowhere did the appellants sought a declaration from the entire land of Kpordui as erroneously stated by the trial Magistrate". It is without doubt that the claim filed by the plaintiffs/Appellants was in respect of the plot of land that they claimed the 1st Defendant/Respondent had trespassed upon and was developing. That plot of land forms part of the Mordedzi Family land which land had been gifted to them by Torgbui Torsu Akporsoe. But it is also not in doubt that the said land granted to the Mordedzi Family according to the Plaintiffs/Appellants was situate in Kpordui according to the record of Appeal. Per the Defendants/Respondents, Kpordui land and its creeks belonged to the Adzovia clan that they belonged. The claim by the Defendants/Respondents had since 1924 been adjudged to be the property of the Adzovia clan that the defendants/respondents belonged. To the Extent that the said land belonged to the Adzovia clan, the claim by the Plaintiffs/Appellants that it was Torgbi Torsu Akporsoe who founded it cannot be ~ 10 ~ true. The said claim is not supported by the evidence on record when the said Torgbui Torsu Akporsoe comes from the Tovia Clan which is different from the Adzovia clan. The evidence before this court is that the plot in dispute has been granted to the Defendant by the Adzovia Clan who are the rightful owners of the land. The land in dispute never belonged to Torgbi Torsu Akporsoe to enable him gift same to the Mordedzi Family as claimed by the Plaintiffs/Appellants. The conclusion reached by this court clearly suggest that the claim by the Appellants that the judgment is not borne out of the record is not correct. The said ground of appeal does not find favour with me and same is accordingly

dismissed with respect to counsel for the Plaintiffs/Appellants. The next ground of appeal is that the Plaintiffs/Appellants did not sue from the Kpordui land but that of the Modedzi family land. Judging from the writ filed by the Plaintiffs/Appellants the claim related to a plot of land which forms part of the Mordedzi Family property in Kpordui. The defendants per his statement of defence indicated that the land he was working on belonged to the Adzovia Clan who had granted same to him. ~ 11 ~ Per the evidence on record the land in dispute can be found in Kpordui. The 1st Plaintiff/Appellant and his witnesses admitted this fact. Both parties per the totality of their evidence on record admitted this fact. But the parties disagreed on the mode of acquisition of the disputed land. According to the Plaintiffs/Appellants it was Torgbi Torsu Akporsoe who had founded the land about Four Hundred (400) years ago before gifting same to Mordedzi who was his sister's son. It was a portion of the land granted to the Mordedzi Family that the Defendants had trespassed unto leading to the issuance of the writ. The defendants/Respondents denies this claim by the Plaintiffs/Appellants that it was Torgbi Torsu Akporsoe who had founded the land. According to them the entire Kpordui land and creeks belonged to the Adzovia clan who are the rightful owners of the land in dispute. Even though the dispute before the trial court related to a small portion of Kpordui land, by the varied positions of the parties in this case, ownership of the Kpordui lands was in the centre of the dispute. The trial court had to determine which of the Parties-Plaintiffs or Co-Defendants were the rightful owners of Kpordui land to enable the court determine whether the Defendant had trespassed unto the land or not. The Plaintiffs/Appellants have filed several additional grounds of appeal but the effect of the said grounds clearly related to the joinder of the Co-defendant to the claim filed by the Plaintiffs/Appellants and ~ 12 ~ the effect of the Locus Report on the said judgment of the court. In respect of the joinder of the Co-defendants/respondents the Plaintiffs/Appellants have submitted that the joinder of the said persons were not warranted. Granted but not admitting that the joinder of the Co-Defendants was even not warranted by any rule, that fact alone cannot impeach the judgment of the court or between the Plaintiffs/Appellants and the Defendants/Respondents. See Order 4 Rule 5(1) of C I 47. For the avoidance of any doubt the said rule provides as follows. "No proceedings shall be defeated by reason of misjoinder or non- Joinder of any party, and the court may in any proceeding determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceedings". In the matter before the trial court, the Plaintiffs/Appellants had sued the defendants for a plot of land they claimed the defendants/respondents had trespassed unto. The defendants/respondents in his defence stated that he bought the property from the Adzovia Clan who are the owners. The Plaintiffs/Appellants in their statement of claim have stated clearly that the plot in dispute forms part of their family land given to them by Torgbe Akporsoe. It is in view of this claim by the Plaintiffs/Appellants that the Co-defendants applied to join ~ 13 ~ the suit. The Co-defendants based on this counterclaim against the Plaintiffs/Appellants for declaration of title in respect of the Kpordui lands. It is the claim by the Plaintiffs/Appellants which had forced the Co-defendants/Respondents to join. I have perused the record and do not see anything contrary to the joinder of the Co- defendants/respondents in the matter. Granted but not admitting I

have even fallen in error, the decision of the court that land in dispute lies within Kpordui and it is the Co-defendant who are the proper persons to alienate is amply supported by the evidence on record. I do not see the need for the locus inspection made by the court because there was enough material on record to determine the matter in dispute. Be that as it may, the record as stated by the said locus report could not have put to rest who was the owner of the Kpordui land. I must however admit that the Plaintiffs/Appellants ancestors were in possession of some portions of the Kpordui land. That possession alone could not have made them owners of the land in dispute. The Co-defendants/respondents had also granted some portions of the land in dispute to certain persons. Be that as it may ownership of lands within Volta Region generally belongs to clan as stated in the evidence on record. The Kpordui lands clearly ~ 14 ~ belongs to the Adzovia clan who could properly alienate same. All the conclusions reached by me clearly suggest that the present appeal has no merit. I would dismiss same with respect to Counsel for the Plaintiffs/Appellants. Accordingly, the decision by the District Magistrate is hereby affirmed. No order as to cost. [SGD] H/L JUSTICE DANIEL MENSAH JUSTICE OF THE HIGH COURT. ~ 15 ~

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